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In The
Supreme Court of the United States

October Term, 1996

UNITED STATES OF AMERICA,
Petitioner,

vs.

HERNAN RAMIREZ,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., AND THE NATIONAL SHERIFFS' ASSOCIATION IN SUPPORT OF THE PETITIONER.

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This brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondent. The letters of

consent have been filed with the Clerk of this Court, as required by the Rules.[1]

INTEREST OF *AMICI CURIAE*

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various state and federal constitutions.

AELE has previously appeared as *amicus curiae* over 100 times in the Supreme Court of the United States and over 35 times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 14,000 members in 72 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

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[1] As required by Rule 37.6 of the United States Supreme Court, the following disclosure is made: This brief was authored for the *amici* by James P. Manak, Esq., counsel of record; Professor Emeritus Fred E. Inbau, Esq., Northwestern University School of Law; and Wayne W. Schmidt, Esq., Executive Director of Americans for Effective Law Enforcement, Inc. No other persons authored this brief. Americans for Effective Law Enforcement, Inc., made the complete monetary contribution to the preparation and submission of this brief, without financial support from any source, directly or indirectly.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

Amici are national professional associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of executing and overseeing the process of arrest and search warrants within the bounds of the law; and (2) police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such matters, including the formulation and implementation of policy on the execution of arrest and search warrants.

Because of the relationship with our members, and the composition of our membership and directors–including active law enforcement administrators and counsel–we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

STATEMENT OF THE CASE

The court below, *United States v. Ramirez*, 91 F.3d 1297 (9th Cir. 1996), ruled that an exigency supporting a no-knock entry of a dwelling accomplished through the destruction of property must be stronger than a "mild exigency" that suffices to justify a no-knock entry without property damage. It ruled that the facts–a suspect being sought at another person's home had knocked down a law enforcement officer in escaping from custody, had declared that he would not do a lengthy federal

sentence he was facing, had struck an officer and rammed a police vehicle in another escape attempt, and had threatened to kill witnesses–did not provide sufficient exigency to justify a police officer's breaking of a window and poking a gun through it when executing the no-knock warrant in this case.

SUMMARY OF ARGUMENT

Amici take the position that the "stronger than mild exigency" rule adopted by the court below:

1. Does not comport with existing law on the subject;
2. Is not compelled by this Court's interpretation of reasonableness under the Fourth Amendment concerning the execution of warrants on private premises as established in *Wilson v. Arkansas*, 115 S. Ct. 1914 (1995);
3. Would place the lives of police officers in serious jeopardy if adopted by this Court; and
4. The officers in this case acted in good faith within the purview of *United States v. Leon*, 468 U.S. 897 (1984).

ARGUMENT

POLICE OFFICERS NEED NOT POSSESS MORE SPECIFIC EVIDENCE OF DANGER TO THEMSELVES OR OTHERS IN ORDER TO JUSTIFY A NO-KNOCK ENTRY IN WHICH THEY DAMAGE A DOOR OR WINDOW THAN WOULD BE REQUIRED TO JUSTIFY A NO-KNOCK ENTRY MADE WITHOUT DAMAGE TO PROPERTY. TO REQUIRE THE LEVEL OF EVIDENCE OF DANGER INDICATED BY THE COURT BELOW WOULD SERIOUSLY COMPROMISE OFFICER SAFETY.

Amici will not repeat the arguments of petitioner, United States of America, which we support, except to point out that under the rule adopted by this Court in *Wilson*, *supra*, when officers are serving warrants on private premises and they have reasonable suspicion to believe they are in peril and need the element of surprise, it should not matter whether the fortuity of

an unlocked door or open window gives them the right to execute an unannounced entry without breaking property.

As stated in *Dalia v. United States*, 441 U.S. 238, 257 n.19 (1979), "[O]ften it is impossible to anticipate when [it] will be necessary" for officers to engage in "forceful breaking and entering * * * to effect a warranted search."

In such cases, the primary need for officers to protect themselves–or to avoid the destruction of evidence–is that of surprise. This element of surprise is the same whether or not minor property damage is involved (*amici* note that in this case the damage was truly *de minimis*: a garage window was broken as a diversionary tactic).

With knowledge that the person the officers were seeking was dangerous, as found by the magistrate who issued the no-knock warrant under 18 U.S.C. § 3109, the officers were not only justified in using the minor tactic they chose, but reasonable officers in the same position, based upon the totality of the circumstances, undoubtedly would have and could have done the same thing. *United States v. Leon*, *supra*. To place a burden of an "extra exigency" upon the officers for minor property damage to protect themselves or avoid the destruction of evidence is not only unsupported by the Fourth Amendment reasonableness requirement, but is counter-productive to officer safety.

The conduct of the officers in this case was entirely in keeping with the interest of this Court in the safety of police officers when performing proper law enforcement functions, *e.g.*, *Maryland v. Wilson*, 117 S. Ct. 882 (1997) (traffic stops); *Maryland v. Buie*, 494 U.S. 325 (1990) (protective sweeps of premises); *Terry v. Ohio*, 392 U.S. 1 (1968) (detentions for investigation). The degree of certainty expected by the court below in order to justify minor property damage is unrealistic and totally out of step with the interest in officer safety exhibited by this Court. There is good reason for concern for

officer safety in cases involving the execution of arrest and search warrants on premises.

Amici, as law enforcement administrators, can cite from our experience many instances where officers have been killed or injured while serving such warrants. In some cases there was little to suggest specific danger to the officers as they knocked and announced their entrance and were met with a hail of bullets or other assaultive resistance. In other cases where officers were specifically authorized by a judicial officer to serve their warrants without knocking and announcing, their reasonable conduct was likewise met with deadly resistance.

Calibre Press, Inc., of Northbrook, Illinois, a national training and publishing organization dealing with police officer safety issues, cites these representative examples of the dangers of which we speak:

- In July 1987 three police officers were shot dead while serving an arrest warrant for a bad check violation and an eviction notice on an elderly woman and her three sons at a motel. Documented by an article in *The Detroit News*, July 10, 1987, at A1.

- On February 8,1978, police officers serving a "high risk search warrant" at a home occupied by a motorcycle gang, did knock and announce their presence, even though later facts developed in the case showed that the gang planned to ambush the officers. Two officers were injured when struck by gunfire from within the house. Documented by letter of Lt. Jack H. Redfield, Klamath Falls Police Department, Klamath Falls, Oregon, dated July 10, 1997, to the Calibre Press Street Survival Newsline.

- On March 2, 1986, an officer, who was serving a warrant for narcotics without first knocking and announcing his presence, was hit in the stomach by a bullet fired through

the door of an apartment as he attempted to go through the door. Only the fact that he was wearing Kevlar armor saved his life. Documented by letter of Lt. Michael Doane, Lexington-Fayette Urban County Police Department, Lexington, Kentucky, dated July 6, 1997, to the Calibre Press Street Survival Newsline.

- In September 1992, officers served a knock and announce search warrant on a person suspected of selling LSD. The subject "had very little in the way of criminal history. His background did not indicate he was a violent person." After knocking and announcing their presence and entering the apartment, they found the subject in a bedroom. Before the police could even open the bedroom door, the subject fired five shots from a revolver, hitting a police officer in the head. Only the fact that the officer was wearing a Kevlar helmet saved his life. Documented by letter of Lt. Ron Merideth, El Centro Police Department, El Centro, California, dated July 9, 1997, to the Calibre Press Street Survival Newsline.

These[1] are just a handful of examples that *amici* know from experience exist in great numbers. We know that the service of warrants on private residences ranks among the most dangerous activity in which officers can engage.

We believe the eloquent dissent of Circuit Judge Kozinski in the court below best summarizes the Ninth Circuit's rule in this case: that the court has painted an unreal picture of "every man's 'little castle,'" but that such a "castle" often looks like a fortress to the police from the outside and they can never be certain of the danger that lurks within. Such a quaint view of "every man's 'little castle'" depicted by the majority overlooks

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[1] Copies of these materials are available from Counsel of Record, James P. Manak, at the address listed in the inside front cover of this brief.

the reality of modern criminal conduct that the police must deal with every day.

Judge Kozinski also alluded to the fact that it would hardly deter the police from unconstitutional conduct directed toward one person (the subject of the warrant in this case) when evidence obtained against another (the defendant) is discovered and suppressed. As noted in *Durham v. United States*, 403 F.2d 190, 196 (9th Cir. 1968): "The price is too high and the advantage too uncertain to make it reasonable to suppose that law enforcement officers will be encouraged to indulge in unlawful searches, knowing that what they find will be suppressed, in the hope of obtaining admissible evidence as remote and fortuitously acquired as this."

Amici submit that the officers in the instant case acted in objective good faith based on the totality of the circumstances known to them at the time of their actions. It is certain that to construct an added exigency evidentiary requirement, as the court below has done, for cases involving minor property damage in serving no knock warrants will cost the lives of many police officers in the future.

CONCLUSION

Amici urge this Court to reverse the decision of the court below on the basis of the precedents of this Court and sound judicial policy.

Respectfully submitted,

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